

EXHIBIT NO. 1

ORIGINAL

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UNITED STATES DISTRICT COURT
for the
EASTERN DISTRICT OF MASSACHUSETTS

JUDITH THIBEAU,
and GEORGE THIBEAU,

Plaintiffs

vs.

UNITED STATES OF AMERICA
and EAST BOSTON NEIGHBORHOOD
HEALTH CENTER CORPORATION,

Defendants

C.A. NO.
04-10643 LTS

DEPOSITION OF JUDITH THIBEAU, a witness
called on behalf of the Defendant, East Boston
Neighborhood Health Center, pursuant to the
Massachusetts Rules of Civil Procedure, before
Karrie Smith, a Certified Shorthand Reporter and
Notary Public in and for the Commonwealth of
Massachusetts, at Koufman & Frederick, LLP,
1330 Beacon Street, Brookline, Massachusetts, on
Tuesday, June 28, 2005, commencing at 10:17 a.m.

EPPLEY COURT REPORTING, LLC
Post Office Box 382
Hopedale, Massachusetts 01747
(508) 478-9795 (508) 478-0595 (Fax)
leppey@msn.com

1 visit, you were prescribed some eyeglasses?

2 A. Yes.

3 Q. And if I have it right, and correct me if
4 I'm wrong, you would return to the eye clinic for
5 routine eye care?

6 A. Yes.

7 Q. And have you ever had to have your
8 prescription increased for reading -- or changed?

9 A. I think it was changed.

10 Q. More than one time?

11 A. No.

12 Q. How many times has it been changed?

13 A. I think once.

14 Q. And do you know when that was?

15 A. No, I don't remember.

16 Q. The incident I believe took place on
17 September 26, 2002; is that correct?

18 A. Yes.

19 Q. How many times would you say you were at
20 the 79 Gove (sic) Street address prior to that time?

21 A. Five or six times.

22 Q. When you would go to the eye clinic,
23 would you go by yourself or with your husband?

24 A. I would go by myself unless I had to have

1 my eyes dilated.

2 Q. Now, on the September 26, 2002 visit, you
3 knew ahead of time that you were going to need your
4 eyes dilated?

5 A. Yes. Well, I was going to see the
6 surgeon.

7 Q. Did you understand that your eyes were
8 going to be dilated at that time?

9 A. Yes.

10 Q. And is it fair to say that your husband
11 accompanied you at that time?

12 A. Yes.

13 Q. And did he accompany you because you
14 understood that your eyes were going to be dilated?

15 A. Yes.

16 Q. Prior to that time, prior to
17 September 26, 2002, do you have any memory of your
18 husband accompanying you to the clinic in any of the
19 prior visits?

20 A. No.

21 Q. Had you ever had your eyes dilated prior
22 to September 26, 2002?

23 A. Yes.

24 Q. And was that at the clinic?

1 A. Yes.

2 Q. Did anyone accompany you at that time?

3 A. Yes, my son.

4 Q. The young one?

5 A. Yes. Well, he drove me and then came
6 back to pick me up.

7 Q. What is his name?

8 A. Jeffrey.

9 Q. Do you have four sons?

10 A. Three boys and a girl.

11 Q. And he is presently in college.

12 A. Yes, he is.

13 Q. Where is he attending?

14 A. Roger Williams in Rhode Island.

15 Q. What year is he?

16 A. He'll be a senior.

17 MR. WEIGAND: Off the record.

18 (Recess taken, 10:41 a.m. - 10:42 a.m.)

19 Q. So your memory is Jeffrey drove you and
20 dropped you off?

21 A. Yes.

22 Q. And then he picked you up?

23 A. Yes.

24 Q. Did he ever go inside the clinic for that

1 visit?

2 A. My visit?

3 Q. Yes.

4 A. No.

5 Q. We're talking about the prior visit to
6 September 26, 2002 where you had your eyes dilated,
7 right?

8 A. Right.

9 Q. Do you know what year you had that prior
10 eye dilation?

11 A. It was in 2002. It was a few months
12 before.

13 Q. The second eye dilation was a few months
14 before?

15 A. Before September 26.

16 Q. Let me back up a little bit. I just want
17 the record to be clear.

18 On September 26, 2002, you went to the
19 clinic with your husband to have some eye care; is
20 that correct?

21 A. Right.

22 Q. That was the day that we had the fall
23 that we're going to talk about, right?

24 A. Correct.

1 Q. You knew ahead of time, prior to going to
2 that visit, that you were going to have your eyes
3 dilated; is that correct?

4 A. Yes.

5 Q. And I think you told me that you had your
6 husband accompany you to help give you a ride back;
7 is that right?

8 A. Yes.

9 Q. Now, I believe you told me that prior to
10 September 26, 2002 there was another occasion that
11 you were at the eye clinic that you had your eyes
12 dilated; is that correct?

13 A. Right.

14 Q. Okay. And if I have it right, and
15 correct me if I'm wrong, Mrs. Thibeau, that you say
16 that was a few months before?

17 A. Yes.

18 Q. If the incident was on September 26,
19 2002, when do you understand that prior dilation
20 occurred?

21 A. To the best of my memory, it was June.

22 Q. Around June?

23 A. June.

24 Q. Prior to June, did you ever have your

1 eyes dilated at any other occasion?

2 A. Yes.

3 Q. When was that?

4 A. That, I don't remember.

5 Q. Was that also at the eye clinic?

6 A. Yes.

7 Q. On that occasion, do you have a memory of
8 someone giving you a ride?

9 A. Yes. I never -- when I knew that I was
10 going and they were going to dilate my eyes, I didn't
11 drive.

12 Q. Do you have a memory of who went with you
13 on that first occasion?

14 A. No.

15 Q. So if I have it right, prior to the
16 incident where you had the fall on September 26,
17 2002, you recall two prior occasions where you had
18 your eyes dilated at the clinic; is that correct?

19 A. Yes.

20 Q. Were there any other occasions besides
21 the two prior to this September 26, 2002 visit?

22 A. I don't remember exactly how many times.

23 Q. But as you sit here today, your best
24 memory is that at least twice before the incident on

1 September 26, 2002 --

2 A. Yes.

3 Q. You have to let me finish.

4 MR. FREDERICK: Let him finish.

5 A. Sorry.

6 Q. It's easy to do.

7 Of those two prior visits where you had
8 your eyes dilated, do you recall any of the
9 physicians that provided care for you at that time?

10 A. I don't remember their names.

11 Q. How about on September 26, 2002, do you
12 recall any of the physicians that provided you with
13 eye care at that time?

14 A. There was a student and then the surgeon.

15 Q. Do you recall their names?

16 A. No, I don't.

17 Q. Do you know Doctor Pietrantonio? Does
18 that sound right?

19 A. Yes.

20 Q. Had you ever seen or treated with him
21 prior at the eye clinic?

22 A. Yes.

23 Q. And how many times did you treat or see
24 Doctor Pietrantonio prior to September 26, 2002?

1 A. Before September?

2 Q. Yes.

3 A. Maybe two or three times.

4 Q. Was he ever involved in any of the prior
5 eye dilations?

6 A. I don't remember.

7 Q. As far as the prior eye dilations that
8 you had and that you can recall, what, if anything,
9 were you told about the dilation procedure?

10 A. They didn't say anything.

11 Q. Now, prior to coming to those visits, did
12 you understand that you were going to have your eyes
13 dilated?

14 A. Yes.

15 Q. What do you recall being told prior to
16 coming to the visit about the eye dilation?

17 A. See, I always make sure somebody drives
18 me when I'm going to have them dilated because when I
19 first started to go there and they were going to
20 dilate my eyes, they asked me if I drove, and I said
21 yes, I did. And they said they couldn't do it
22 because I couldn't drive home. So that's how I knew
23 from then on.

24 Q. Were you told anything as to why they

1 wanted to dilate the eyes or why that procedure is
2 done for patients?

3 MR. FREDERICK: On which occasion?

4 Q. On either of the prior two occasions
5 previous to the September 26, 2002, incident.

6 A. Well, the time before September, I went
7 there because I was having problems -- I had a
8 cataract. That's when they determined that I had the
9 cataract.

10 Q. Were you having some problems prior to
11 June?

12 A. Yes.

13 Q. What kind of problems were you having?

14 A. I had blurry vision, lights bothered me.
15 I couldn't drive at night.

16 Q. When would you have blurred vision?

17 A. Well, it was kind of like a film over my
18 eye.

19 Q. Did you have more difficulty at night?

20 A. With the lights, yes.

21 Q. When you would drive during the day prior
22 to June 2002, did you use your glasses? Do you use
23 your glasses to drive?

24 A. No.

1 Q. Did you have any problems driving during
2 the day?

3 A. I always wore sunglasses.

4 Q. So due to some problems you were having,
5 they diagnosed you with cataracts?

6 A. Yes.

7 Q. And then they asked you to come in for
8 the June dilation or did the --

9 A. In September.

10 Q. September. What happened in the June
11 visit at the eye center in 2002?

12 A. I had a regular eye exam and that's when
13 they determined I had the cataract.

14 Q. Do you know if Doctor Pietrantonio was
15 the physician at that time?

16 A. I think so. There's always a student
17 there that sees you first and then the doctor comes
18 in. And I believe it was him.

19 Q. And the student and/or the physician
20 conducted an eye exam?

21 A. Yes.

22 Q. In June, was your husband -- oh, that was
23 the time that Jeffrey was with you; is that correct?

24 A. Yes.

1 Q. And he was not inside the clinic during
2 any of the care; is that right?

3 A. No.

4 Q. What, if anything, do you recall being
5 told during your visit at the eye clinic in June of
6 2002?

7 A. About --

8 MR. FREDERICK: In general or --

9 Q. Anything you can recall being told about
10 your eyes, treatment.

11 A. They told me I had a cataract and I
12 should have it seen by -- or taken care of. And they
13 said they would make an appointment for
14 September 26th so I could see the surgeon that went
15 to the clinic, I believe, once a month to see
16 patients.

17 Q. At the June 2002 appointment, did they
18 dilate your eyes?

19 A. Yes.

20 Q. Do you recall being told anything about
21 why they were doing the dilation or anything about
22 the dilation at all?

23 A. No.

24 Q. Were you given any instructions or

1 warnings with regard to the dilation in June of 2002?

2 A. No.

3 Q. In June 2002, the eye clinic was on the
4 second floor?

5 A. Yes.

6 Q. And how did you get up to the second
7 floor?

8 A. The stairs.

9 Q. In any of your visits at Gove (sic)
10 Street, did you notice that there was an
11 elevator?

12 A. It was on --

13 Q. I'm sorry, my mistake. Paris Street.

14 A. No.

15 Q. So is it fair to say in all the visits
16 you used the stairs?

17 A. Yes.

18 Q. And that is to go up to the second floor
19 clinic and when you were done to come down the
20 stairs?

21 A. Yes.

22 Q. At any of those prior visits, did you
23 have any difficulty with the stairs?

24 A. No.

1 anything, you were told at that visit; is that
2 correct?

3 A. Yes.

4 Q. And you don't have a memory of who the
5 doctor or student was at that visit; is that correct?

6 A. Yes.

7 Q. But consistent with your practice, would
8 you have used the stairs to get to the second floor
9 of 79 Gove (sic) Street at that time?

10 A. Yes.

11 Q. Do you have a memory of anyone being with
12 you when you left the eye clinic at that time, that
13 first time that you recall having your eyes dilated?

14 A. No.

15 Q. Do you recall any difficulties with the
16 stairs when you went down the stairs at the time of
17 that eye visit?

18 A. No.

19 Q. Did you have any contact with the --
20 strike that.

21 Prior to September 26, 2002, do you recall
22 any other contact that you had with the eye center --
23 or eye clinic?

24 A. I don't know what you mean.

1 Q. Okay. You've talked about the visits
2 that you can recall where you had your eyes dilated,
3 and I believe you told me it was sometime -- one
4 visit, but you don't recall the date?

5 A. Right.

6 Q. The second one was in June of 2002?

7 A. Right.

8 Q. If I have it right, you would go to the
9 eye clinic approximately every two years; is that
10 correct?

11 A. Yes.

12 Q. Other than the eye dilation that was in
13 June 2002 and on one prior occasion, what other type
14 of eye care did you receive prior to September 2002?

15 A. Just routine eye exams.

16 Q. And again, you would access the clinic on
17 the second floor by using the stairs; is that
18 correct?

19 A. Yes.

20 Q. At any of those visits that you had,
21 those routine eye visits, do you recall who was
22 providing you any care or treatment at that time,
23 their names?

24 A. No.

1 A. No.

2 Q. At the September 26, 2002 visit, were you
3 given any instructions or warnings with regard to the
4 dilation?

5 A. No.

6 Q. Is it your testimony, Mrs. Thibeu, that
7 you were never provided any warnings or instructions
8 with regard to the dilation at the eye clinic for any
9 of the occasions when you had your eyes dilated?

10 A. Yes.

11 MR. FREDERICK: Well, I think earlier she
12 had said she thought at the first visit someone told
13 her not to drive.

14 A. Right. And they couldn't dilate them at
15 that time.

16 Q. So other than being told not to drive,
17 you have no memory of whether -- a memory of any
18 instructions or warnings regarding dilation; is that
19 right?

20 A. No, they just said not to drive and the
21 light would bother you when you go outside.

22 Q. All right. I may have asked you this, I
23 apologize. Prior to September 26, 2002, on any of
24 the prior occasions where you had your eyes dilated,

1 did you believe it was unsafe to walk alone down the
2 stairs?

3 A. No.

4 Q. On September 26, 2002, after your meeting
5 with the eye doctor and the student, you left the
6 clinic; is that correct?

7 A. Yes.

8 Q. And were you walking with your husband
9 when you left the eye clinic?

10 A. Yes.

11 Q. And you used the stairwell?

12 A. Yes.

13 Q. When you were using the stairwell
14 initially at the top of the stairs on the second
15 floor, did you walk down the stairs?

16 A. Yes.

17 Q. Was your husband with you when you walked
18 down the stairs?

19 A. Yes.

20 Q. Was your husband with you all the way to
21 the end of the stairwell?

22 A. Almost to the end.

23 Q. When you say "almost," how far were you
24 down the stairwell -- Well, strike that.

1 Q. Why don't you tell me what happened as
2 you went down the stairwell?

3 A. I thought I was at the bottom of the
4 stairs and I missed the last step.

5 Q. When you say you missed the last step,
6 what do you mean?

7 A. Well, I stepped over it. I believe I
8 missed that step and that's when I fell. I went
9 forward.

10 Q. When you missed the step, which foot do
11 you recall stepping with, your left or your right?

12 A. I don't recall.

13 Q. Now, you broke the left ankle; is that
14 correct?

15 A. Yes.

16 Q. Do you know what your left ankle hit to
17 cause the break?

18 A. What I think?

19 Q. Yes, your best memory.

20 A. The step, the end of the step.

21 Q. When you say the end of the step, the
22 last step?

23 A. I believe it was the second step.

24 Q. The second step?

1 was at the bottom.

2 Q. So you let go of the railing?

3 A. Right.

4 Q. And then you have a memory of missing the
5 step?

6 A. Yes.

7 Q. Were you looking where you were walking?

8 A. Yes.

9 Q. When you were coming down the steps prior
10 to the fall, did you have any difficulty seeing the
11 steps?

12 MR. FREDERICK: I'm sorry. Could you
13 repeat that?

14 MR. WEIGAND: Yes.

15 Q. As you came down the steps, each of the
16 steps from the clinic to just prior to where you had
17 fallen, were you looking where you were placing your
18 feet?

19 A. I -- I don't remember exactly where I
20 was -- if I was looking down at every step.

21 Q. You don't know if -- Do you recall at any
22 time while you were walking, looking down at where
23 you were placing your feet?

24 A. I don't remember, but I don't think so.

1 A. No.

2 Q. In the building where you see your
3 primary healthcare provider, does that have an
4 elevator?

5 A. Yes.

6 Q. And do you use that elevator when you see
7 your doctor?

8 A. Yes.

9 Q. And did you use the elevator prior to
10 September 26, 2002?

11 A. At the Gove Street?

12 Q. Yes.

13 A. Yes.

14 Q. While you were at the eye clinic, did you
15 ever ask if there was an elevator?

16 A. No.

17 Q. When you had your eyes dilated, I take it
18 it's same answer, you never asked if there was an
19 elevator?

20 A. No.

21 Q. Do you know, on September 26, 2002, while
22 you were with your husband, whether your husband
23 asked whether there was a elevator?

24 A. No.

1 Q. Do you recall either you or your husband
2 expressing any concerns about using the stairwell
3 after having your eyes dilated on September 26, 2002?

4 MR. FREDERICK: Expressing to whom?

5 MR. WEIGAND: Anyone at the clinic.

6 A. No.

7 Q. Are you aware of any patients or any
8 person at all that had any problems with negotiating
9 the stairwell at 79 Paris Street?

10 A. I have no idea.

11 Q. Are you aware of any prior falls on that
12 stairwell at 79 Paris Street?

13 A. No.

14 Q. Have you ever seen any photographs that
15 were taken in this -- or connected with this
16 litigation with regard to the stairwell?

17 A. Yes.

18 Q. When did you see those?

19 A. I don't know when the first time was.
20 Jim had taken some after the fall.

21 Q. You have a memory of your lawyer having
22 taken pictures?

23 A. Yes.

24 Q. Do you know when he did that?

1 Q. How about the mat that's at the bottom,
2 do you recall that?

3 A. I don't recall that either.

4 MR. WEIGAND: Why don't we have this
5 marked as the first exhibit.

6 (Exhibit No. 1, Photograph, so marked.)

7 Q. I'll show you a second photograph and
8 just ask you to take a look at that. Does that look
9 like the bottom portion or a portion of the last four
10 steps of the stairwell at 79 Paris Street?

11 A. Yes.

12 Q. And the railing that's pictured there, is
13 that the railing where you had your left hand on at
14 the time?

15 A. Yes.

16 Q. And where is your best memory that you
17 took your hand off the railing?

18 A. Right here (indicating).

19 Q. So when you point, you're pointing to the
20 second iron rail from the end is about where you took
21 your hand off?

22 A. Yes.

23 Q. Could you take a pen and just put an X
24 where you believe you took your hand off the rail.

1 Q. And do you have a memory at all of ever
2 stepping on the last step with either foot?

3 A. No.

4 Q. I'll show you Exhibit 1. When you fell
5 and were on the ground, do you remember how you were
6 laying on the ground, which way your head was? If
7 you can, just point your finger.

8 A. I almost hit the wall. My head was here
9 (indicating).

10 Q. And were your feet toward the stairway or
11 were they angled in any way that you can remember?

12 A. Towards the steps, but I don't know if
13 they were angled.

14 Q. Were you on your stomach or on your side
15 or on your back?

16 A. I believe my side.

17 Q. When you fell, do you recall what part of
18 your body hit the ground?

19 A. My whole body.

20 Q. Was it on the side, the stomach or --

21 A. I believe it was my side.

22 Q. The right side?

23 A. Yes.

24 Q. And as best you remember, your head would

1 A. Yes.

2 Q. And it shows an iron or metal handrail or
3 railing on the left?

4 A. Yes.

5 Q. And is that -- again, that's the --
6 strike that.

7 MR. WEIGAND: If you want to take a break
8 now, that's fine with me. It's a good place to do
9 it.

10 MR. FREDERICK: Sure.

11 (Recess taken, 11:53 a.m. - 11:55 a.m.)

12 Q. I'm going to show you one of these
13 photos. This was marked as Exhibit 2. We spoke a
14 few minutes ago, it's the one where you marked the
15 railing.

16 A. Right.

17 Q. And just so I have it correct, the X and
18 the circle around it is where you took your hand off;
19 is that correct?

20 A. Yes, I believe so.

21 Q. And what would you estimate, four to six
22 inches from the end of the railing is where you took
23 your hand off, approximately?

24 A. Yes.

1 dilated in the past, that you needed to watch for
2 your own safety while your eyes were dilated?

3 A. What do you mean? I knew enough not to
4 drive.

5 Q. But did you know also that because your
6 vision was somewhat affected by the dilation, that
7 you would need to watch for your own safety?

8 A. I never really thought about it.

9 Q. Do you believe, Mrs. Thibeau, that you
10 should have been given a warning or instruction by
11 the clinic when your eyes were dilated?

12 A. Yes.

13 Q. What do you believe they should have told
14 you?

15 A. Especially with the cataract and the
16 dilation, that it would be -- my vision would be that
17 much more impaired.

18 Q. When you had your eyes dilated and while
19 you were in the office, did you feel that your eyes
20 were impaired more than they were in the past?

21 A. The left eye.

22 Q. Did you say anything to the medical
23 student or the eye doctor?

24 A. No.

1 Q. What is it now that you believe you
2 should have been told?

3 MR. FREDERICK: Objection.

4 Q. Well, is your position in this lawsuit
5 that you should have been given some kind of
6 instruction or warning when your eyes were dilated?

7 A. (Witness nods.)

8 Q. Is that a yes?

9 A. Yes. I'm sorry. Yes.

10 Q. What is it that you think you should have
11 been told?

12 A. That there was an elevator there, that I
13 could have taken the elevator.

14 Q. What else do you believe you should have
15 been told, if anything?

16 A. No.

17 Q. Just that the elevator was there?

18 A. That the elevator was there.

19 Q. And you knew, did you not, that you
20 needed to be -- otherwise take care in where you were
21 walking and look where you were going?

22 A. Yes.

23 Q. You didn't need to be told that by
24 anybody from the clinic, right?

1 A. What?

2 Q. That you needed to take some care to
3 watch where you were going?

4 A. No.

5 Q. And when did you say you last saw
6 Doctor Cassidy? Was it last year?

7 A. Yes.

8 Q. Do you know what month that was?

9 A. No.

10 Q. Was it just a clinic follow-up visit?

11 A. Yes.

12 Q. And did he tell you anything about your
13 condition that you can recall?

14 A. No. He said this will be as good as it
15 gets, and if I had any problems to call him.

16 MR. WEIGAND: I have nothing further.

17 MR. ALBERTO: Nothing.

18 MR. FREDERICK: No.

19 (Whereupon the deposition was concluded at
20 2:23 p.m.)

21

22

23

24